

**MOTORCYCLE SAFETY UNIT
MOTORCYCLE OPERATOR TRAINING PROGRAM
FY12-13 PRIVATE ENTITY CONTRACT**

THE STATE OF TEXAS

COUNTY OF TRAVIS

CONTRACT NUMBER:

THIS CONTRACT AND AGREEMENT is entered into and between the Texas Department of Public Safety, hereinafter referred to as the Department, and the privately owned and operated training entity, hereinafter referred to as the Contractor, pursuant to the authority granted by Section 662.005, Texas Transportation Code.

I. CONTRACTING PARTIES:

Department: Texas Department of Public Safety

Contractor:

II. STATEMENT OF PROGRAM GOAL: The goal of this program is to provide basic and advanced motorcycle operator training courses at approved locations, meeting the standards set out by the Department and its Administrative Rules, Title 37 T.A.C. Chapter 31, Standards for an Approved Motorcycle Operator Training Course, as amended, promulgated under authority vested in the Department by Section 662.009, Transportation Code.

III. RESPONSIBILITIES OF THE CONTRACTOR:

1. Comply with the requirements of Chapter 662 of the Texas Transportation Code and 37 T.A.C. Chapter 31 in the performance of their responsibilities outlined herein.
2. Conduct quality motorcycle operator training courses using the Department-approved, Basic and Advanced Motorcycle Operator Training course curricula as outlined in the Department's Administrative Rules, Section 31.6, Approved Standard Motorcycle Training Courses.
3. Register students for the courses and collect tuition fees.
4. Contract with, schedule and compensate Department-approved Instructors/RiderCoaches to teach the course(s). Each Instructor/RiderCoach employed or contracted by or associated with the Contractor shall be deemed an agent of the Contractor, and the Contractor shall share responsibility for all acts performed by the Instructor/RiderCoach, which are within the scope of employment and which occur during the course of employment.

5. Contractor shall maintain current copies of all Certificates of Approval of Department approved Instructors/RiderCoaches that conduct curricula offered by the Contractor.
6. When applicable, provide or make arrangements for a storage facility suitable to environmentally and physically secure motorcycles and other equipment used during the conduct of the course(s). The Contractor remains responsible for the stored motorcycles and/or equipment regardless of whether the storage is provided or arranged.
7. When applicable, arrange for the transportation and maintenance of loan motorcycles as needed.
8. Provide access to and use of classroom facilities suitable for instruction, including appropriate audio/visual equipment for presenting the specific curricula.
9. Provide a paved area for the riding portion of the curriculum that meets the following criteria:
 - a. Be roughly 200 feet by 300 feet.
 - b. Minimum run-off of 20 feet to a flat surface.
 - c. Minimum run-off of 30 feet to a pole, column or curb.
 - d. Minimum run-off of 40 feet to a fence, building, drop off or traffic of any kind.
 - e. Be free of potholes and other surface hazards and obstacles in the range or within 20 feet of the perimeter.
 - f. Be relatively flat.
 - g. Be capable of being closed to vehicular and pedestrian traffic.
10. Thirty (30) days prior to contract renewal, submit digital photographs and a detailed to-scale drawing of the range area to the Department for approval; drawing to be signed by Department approved Instructor/RiderCoach. Motorcycle Safety Foundation's guidelines for Range Photographs must be used for digital photographs. Drawing must include as a minimum:
 - a. Overall dimensions up to 60 feet outside of riding area;
 - b. Any potential hazards or obstructions
11. Make arrangements so that the range area will be free of parked cars, vehicular and pedestrian traffic during riding sessions.
12. Maintain a numerical record of the individuals receiving a serialized Motorcycle Operator Training Course Completion Card (MSB-8), and provide protective measures to ensure that unissued cards are secured. Failure to provide a numerical accounting of issued and unissued Motorcycle Operator Training Course Completion Cards shall be considered cause for revocation of approval to offer the motorcycle operator training course.
13. By the first business day of each month Contractor shall report electronically on a Department provided Monthly Training Report (MTR) form, the following information relating to the previous month's training activity to the Department. This form is to be submitted to motorcycle.safety@dps.texas.gov with the subject to include Contractor Name, RERP#, MTR.
 - a. The number of Instructors/RiderCoaches available to provide training for the Contractor.
 - b. The average waiting period for a person wishing to attend a course.
 - c. The number of persons on a waiting list.
 - d. Any additional information relating to the conduct of the courses.

14. By the third business day following the end of each class Contractor shall report electronically, using Department provided reporting system, information relating to individual students enrolled.
 - a. Student's full legal name must be written on Student Report as shown on Driver's License.
 - b. If incorrect or incomplete information is received, Contractor will be contacted to resubmit with corrections within five workdays.
15. Publicize and/or advertise the course using locally developed or Department provided literature.
16. Maintain or arrange for the maintenance of the painted instructional design of the paved area for the motorcycle-riding phase of the curriculum. The Contractor remains responsible for the painted instructional design regardless of whether the maintenance is provided or arranged.
17. Schedule, at regular intervals, basic and/or advanced motorcycle operator training courses during the contract period. A schedule of courses shall be furnished to the Department upon request. Contractor to submit written notification to Department if training does not occur for a period exceeding sixty (60) days at which time all state property may be returned to the Department. If courses are not offered and conducted for ninety (90) days, state issued resources may be returned to the Department.
18. Ensure attendance of the Sponsor Update by Contractor or a representative of Contractor.
19. Obtain an insurance policy that provides at least Two Million Dollars (\$2,000,000) in liability and Ten Thousand Dollars (\$10,000) in medical coverage and if desired coverage for repairing damage to training motorcycles. Provide the Department a copy of the Contractor's certificate of insurance upon annual renewal and whenever changes occur in policy coverage.
20. Provide a copy of any current motorcycle loan agreements and proof of insurance to the Department within three (3) days of contract and upon request. Each year, one month prior to contract renewal and upon request, provide to the Department a list of motorcycles to include VIN, condition, and pictures if requested.
21. Ensure compliance with the Department's Administrative Rules, Section 31.7, Motorcycle Requirements, when teaching the Basic or Advanced Motorcycle Operator Training Courses.
22. Ensure that all course participants and Instructors/RiderCoaches wear protective gear whenever riding during the course. The minimum protective gear is as follows:
 - a. Motorcycle helmet meeting Federal Department of Transportation standards;
 - b. Eye protection;
 - c. Over-the-ankle footwear (not cloth, canvas, etc.);
 - d. Long-sleeved shirt or jacket;
 - e. Long, non-flared denim pants or equivalent; and,
 - f. Full-fingered gloves, preferably leather.
23. Provide a new original RiderCourse Handbook, one for each student enrolled in the Basic Motorcycle Operator Training Course.

24. Execute, and maintain in effect at all times during the term of this contract, a Rider Education Recognition Program (RERP) Agreement with the Motorcycle Safety Foundation.
25. Non-conformance to any portion of the contract may result in immediate cancellation of approval to conduct motorcycle operator training.
26. Such other duties and responsibilities as may be assigned to the Contractor by the Department, consistent with the rules and regulations under which this contract is entered into and consistent with the accomplishment of the overall goals of the parties hereto.
27. Contractor will only use the materials provided by the Department under Section IV for the furtherance of the course contemplated by this agreement and not in the performance of any other training, agreement or contract.

IV. RESPONSIBILITIES OF THE DEPARTMENT:

1. Provide the following Basic Motorcycle Operator Training Course material and assistance at no cost to the Contractor subject to availability and critical need areas:
 - a. Motorcycle Operator Manual, one for each student enrolled in the basic motorcycle operator training course, subject to availability.
 - b. Program documentation forms, as needed.
 - c. Motorcycle helmets and replacements thereof, subject to availability.
 - d. Training motorcycles based on area need, subject to availability.
 - e. Initial cones for use in the riding portion of the course, subject to availability.
 - f. Initial design, layout, and painting of the paved area for the riding portion of the course.
 - g. Assistance and materials to help promote the program, subject to availability.
 - h. On-site evaluation and technical assistance visits.
 - i. Monitoring of the Contractor's compliance with performance and fiscal requirements of this contract.
 - j. Program management assistance, as appropriate.
2. The Department will provide the following for the Advanced Motorcycle Operator Training Course.
 - a. Advanced Motorcycle Operator Training Course training materials for each student enrolled, subject to availability.
 - b. Program documentation forms, as needed.
 - c. Initial cones for use in the riding portion of the course, subject to availability.
 - d. Initial design, layout, and painting of the paved area for the riding portion of the course.
 - e. Assistance and materials to help promote the program, subject to availability.
 - f. On-site evaluation and technical assistance visits.
 - g. Monitoring of the Contractor's compliance with performance and fiscal requirements of this contract.
 - h. Program management assistance, as appropriate.

V. FINANCIAL CONSIDERATIONS.

1. Tuition Fees

- a. **Basic Motorcycle Operator Training Course.** The Contractor may not charge the student tuition (which includes all instructional fees, material fees, book fees, laboratory fees, etc.) totaling more than One Hundred Ninety Five Dollars (\$195.00).
- b. **Advanced Motorcycle Operator Training Course.** The Contractor may not charge the student tuition (which includes all instructional fees, material fees, book fees, laboratory fees, etc.) totaling more than Eighty Dollars (\$80.00). When the Advanced Course is offered for operator with a passenger, the maximum tuition of Eighty Dollars (\$80.00) for each person may be charged for the operator and the passenger.
- c. **Exceptions to the Above.** For courses with one to three students, the Contractor may charge each student a maximum tuition equal to the total tuition for four students divided by the actual number of students taking the course. (Example for the Basic Course: \$780.00/number of students equals the tuition for each student).

2. **Reimbursement Claims:** The Department is a state agency whose authority and appropriations are subject to the actions of the Texas legislature and the United States Congress. If the Department and/or the subject matter of this contract become subject to a legislative or regulatory change, revocation of statutory or regulatory authority, or lack of funds that would render the services and/or goods and/or payment to be provided under this agreement impossible, unnecessary, void or substantially amended, the Department may terminate this agreement without penalty to, or any liability whatsoever on the part of, the Department or the State of Texas. This contract does not grant the Contractor a franchise or any other vested property right.

Claims for reimbursement shall be submitted no later than thirty (30) days after the completion of the activity for which the claim is submitted. All claims against this contract must be submitted within thirty (30) days of the end of each year of the contract term.

The Department will reimburse the Contractor based on the following:

- a. **Sponsor Update.** The Department will reimburse mileage and per diem expenses incurred by the Contractor's administrative and educational representative(s) attending the Department Sponsor Update. This reimbursement will not exceed the approved state authorized rates (fm.x.cpa.state.tx.us/fm/travel/travelrates.php) and will not exceed a total of Five Hundred Dollars (\$500.00) each year of the contract term.

The total maximum amount of this contract shall not exceed **One Thousand Dollars (\$1,000.00)**.

The Department shall pay for services received from appropriation item(s) or account(s) from which like expenditures would normally be paid, based upon vouchers drawn by the Department payable to the Contractor.

The Department and the State Auditor have the right to audit the Contractor's records relating to the performance of this contract. The State Auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the State Auditor, under the direction of the

legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

VI. CONTRACT AMENDMENTS: Modifications or amendments to this contract are only valid if they are in writing and are signed and dated by both parties.

VII. TERMINATION AND CANCELLATION: Pursuant to Section 662.008 of the Texas Transportation Code and 37 T.A.C. Chapter 31, the Department has the right to deny, suspend or cancel this contract.

VIII. CONTRACT REASSIGNMENT: This contract may not be assigned or transferred and is only valid as to the Contractor listed herein.

IX. DISCRIMINATION: The Contractor, with regard for the work performed by it during the contract, shall not discriminate on the basis of race, color, sex, religion, age, handicap, national origin, or make or type of motorcycle ridden in the selection, training, and/or retention of Instructors/RiderCoaches or participants in the Motorcycle Operator Training Program.

X. HOLD HARMLESS: The Contractor is an independent agency and not an agent, servant, or employee of the Department. To the extent allowed by law, the Contractor shall hold the State and its representatives harmless from and against any and all suits, causes of action, claims, real or imagined, of any kind or character brought by any person or entity or representative of any person, as a result of any alleged or imagined damage to any person or property, alleged to be a consequence of any act on the part of the Contractor or its employees, be it an act of commission or omission. Further the Contractor specifically warrants that it will defend and indemnify the State of Texas from and against any and all costs regarding the defense of any such claim and will wholly and completely provide for the defense of such claims to the extent that the Contractor is legally capable under the laws and Constitution.

XI. RETENTION OF RECORDS: The Contractor agrees to maintain records, documents, and other evidence pertaining to the courses offered under this for a period of three (3) fiscal years plus current fiscal year and/or the last date of action on a State of Texas voucher. Within this timeframe, Contractor is required to issue replacement certificates to students and may charge a fee up to Ten Dollars (\$10) for a lost certificate.

XII. TERM OF CONTRACT: This contract becomes effective upon signature of both parties but not prior to **September 1, 2011**, and terminates on **August 31, 2013**.

XIII. EXPENDITURES: Expenditures are not reimbursable.

XIV. APPLICABLE LAW. The laws of the State of Texas applicable to contracts made and performed entirely therein thereto shall govern this contract and all materials and / or issues collateral.

XV. MISCELLANEOUS PROVISIONS.

1. Except as provided by Texas and / or Federal laws and regulations, neither party shall have control over the other party with respect to its hours, times, employment, etc.
2. Under no circumstances shall either party be deemed an employee of the other.
3. The parties warrant that their mutual obligations shall be performed with due diligence in a safe and professional manner and in compliance with any and all applicable statutes, rules and regulations.
4. Texas Government Code, Chapter 2260, prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. If and to the extent Chapter 2260 applies to this contract, the Contractor shall comply with the requirements of Chapter 2260 and the DPS Administrative Rules adopted pursuant to Chapter 2260.
5. Pursuant to Section 2155.4441 of the Texas Government Code, the Contractor shall buy Texas products and materials for use in providing the services authorized in this contract when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.
6. Under Section 231.006, Family Code, the Contractor certifies that the individual or business named in this contract is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
7. Force Majeure - Either party may be excused from performance under this contract for any period that such party is prevented from performing its obligations in whole or in part as a result of any act of God, war, civil disturbance, epidemic, court order, or other event outside the control of such party, provided the party seeking to be excused has prudently and promptly acted to take any and all reasonable corrective measures that are within such party's control.
8. Gifts – Except as stated in this contract, Contractor has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract.
9. Debt to State – Contractor agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
10. DPS Employee within Last 12 Months – Pursuant to Section 2252.901 of the Texas Government Code, a state agency is prohibited from entering into a contract with a former employee of the agency within one year of the employee's departure from the state agency. The Contractor certifies that if he is a former employee of the Texas Department of Public Safety, that he has not been an employee of the Texas Department of Public Safety within the last twelve (12) months.
11. Executive Director of DPS – Pursuant to Section 669.003 of the Texas Government Code, relating to contracting with an executive director of a state agency, Contractor represents that no person who, in the past four years, served as the executive director of the Texas Department of Public Safety was involved with or has any interest in this contract.

XVI. LIMITATIONS OF AUTHORITY.

1. Neither party has authority for and on behalf of the other except as provided in this contract. No other authority, power, partnership, use or rights are granted or implied except as provided by Texas and /or Federal laws and regulations.
2. Neither party may incur any debt, obligation, expense or liability of any kind on behalf of the other party without the other party's express written approval.

XVII. VENUE. Venue to enforce this contract shall lie exclusively in Travis County, Texas.

XVIII. CONTRACT SIGNATURES: It is mutually understood that a person or officer of the Contractor that is authorized to do so according to the normal operating procedures of said Contractor shall sign this contract. If the governing body of the Contractor is required to approve this contract, it shall not become effective until approved by that governing body.

CONTRACTOR

TEXAS DEPARTMENT OF PUBLIC SAFETY

By: _____

By: _____

Title: _____

Title: Deputy Assistant Director, Education,
Training & Research Bureau (ETRB)

Date: _____

Date: _____